

# Legal and Regulatory Issues Surrounding Rainwater Catchment and Use in Washington State and Possible Paths Forward

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# Outline

- Introduction to Washington Water Law
- The law relating to rainwater catchment and beneficial use
- Possible paths forward

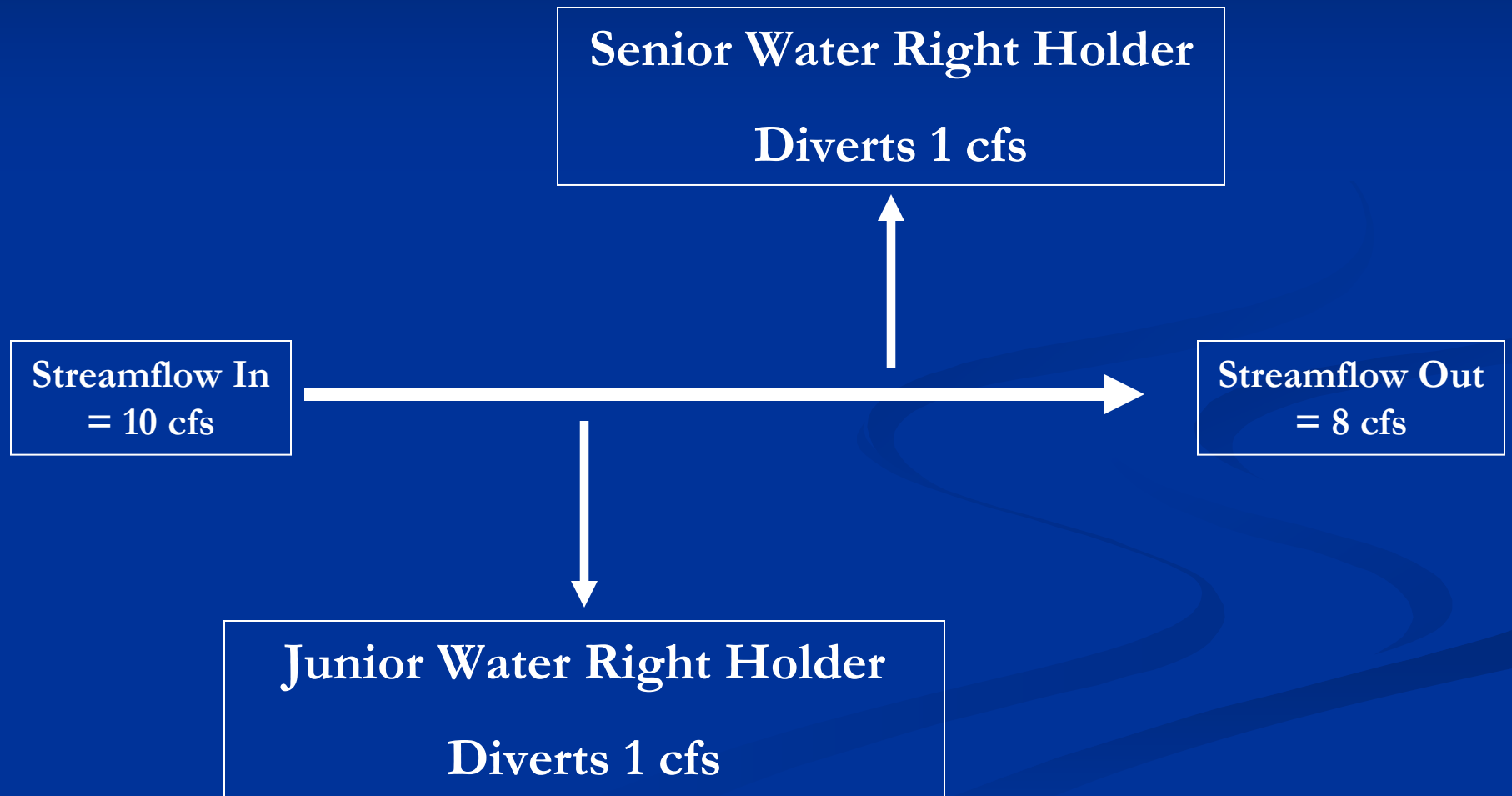
# Surface Water Code - 1917

## Chapter 90.03 RCW

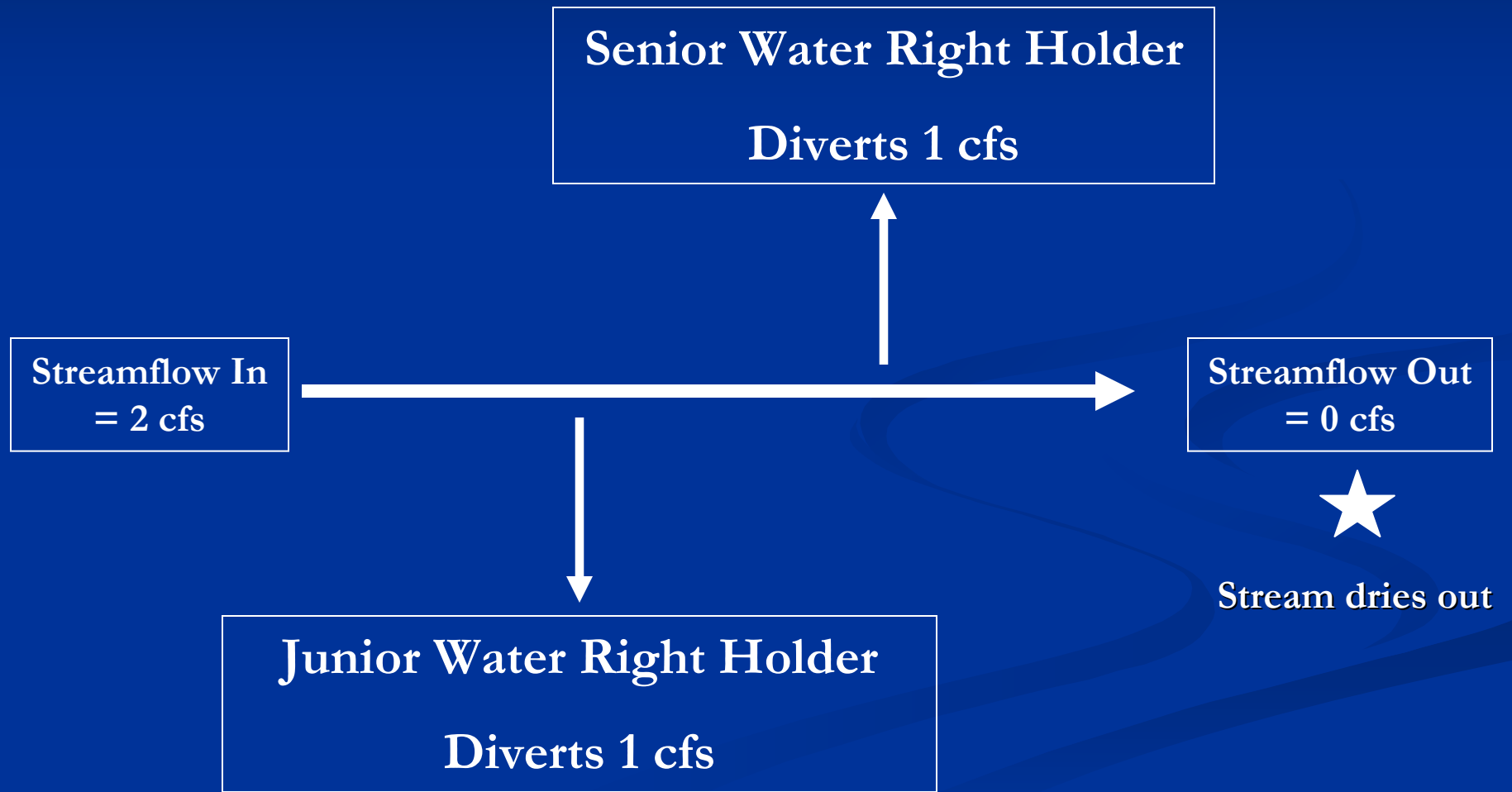
Principles of western water law adopted for Washington:

- Waters of the state are a public resource
- New beneficial uses of water need a water right.
- First in time is first in right
- Existing water rights must be protected

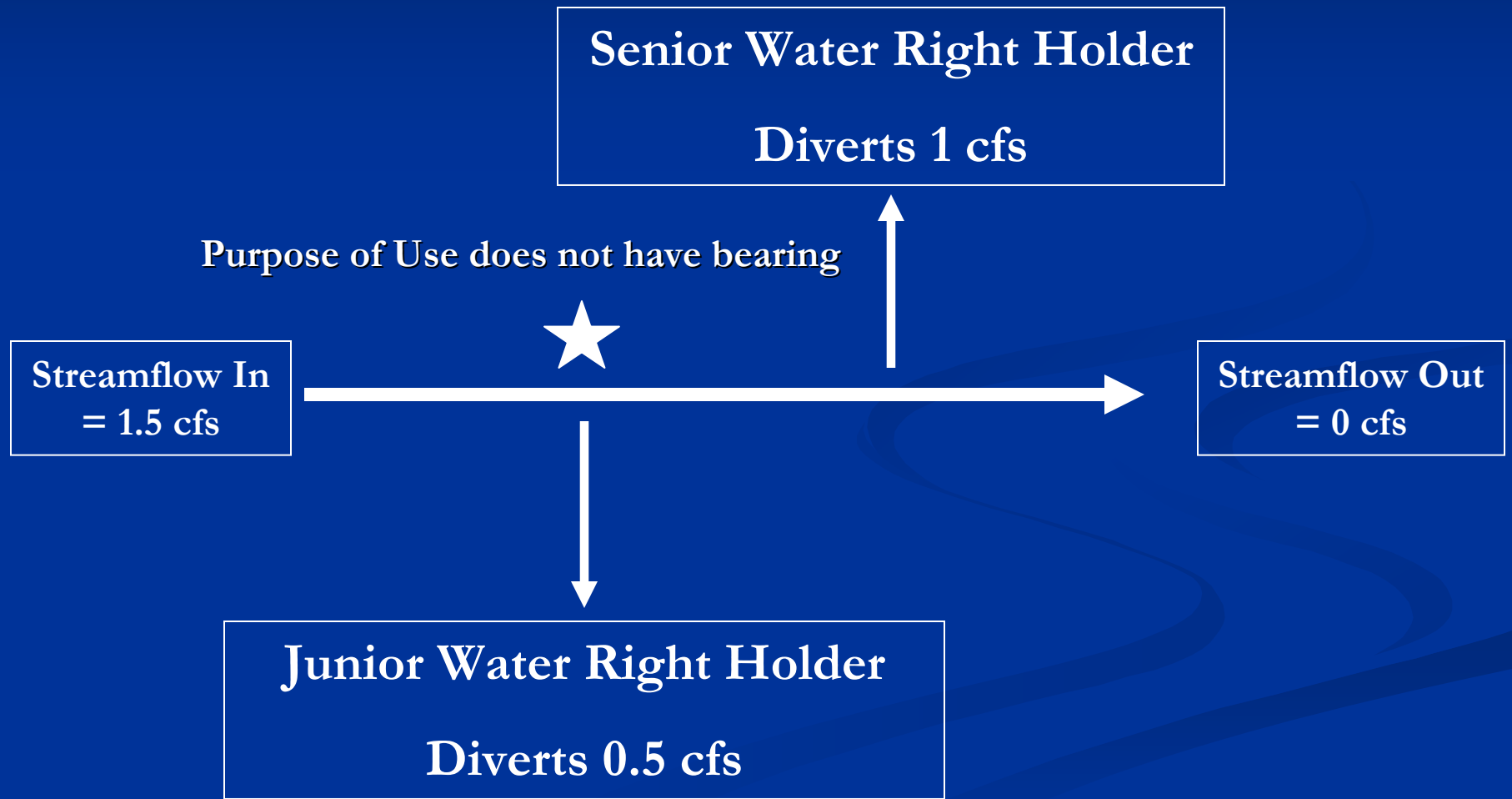
## Both Water Right Holders Able to Divert Full Rights



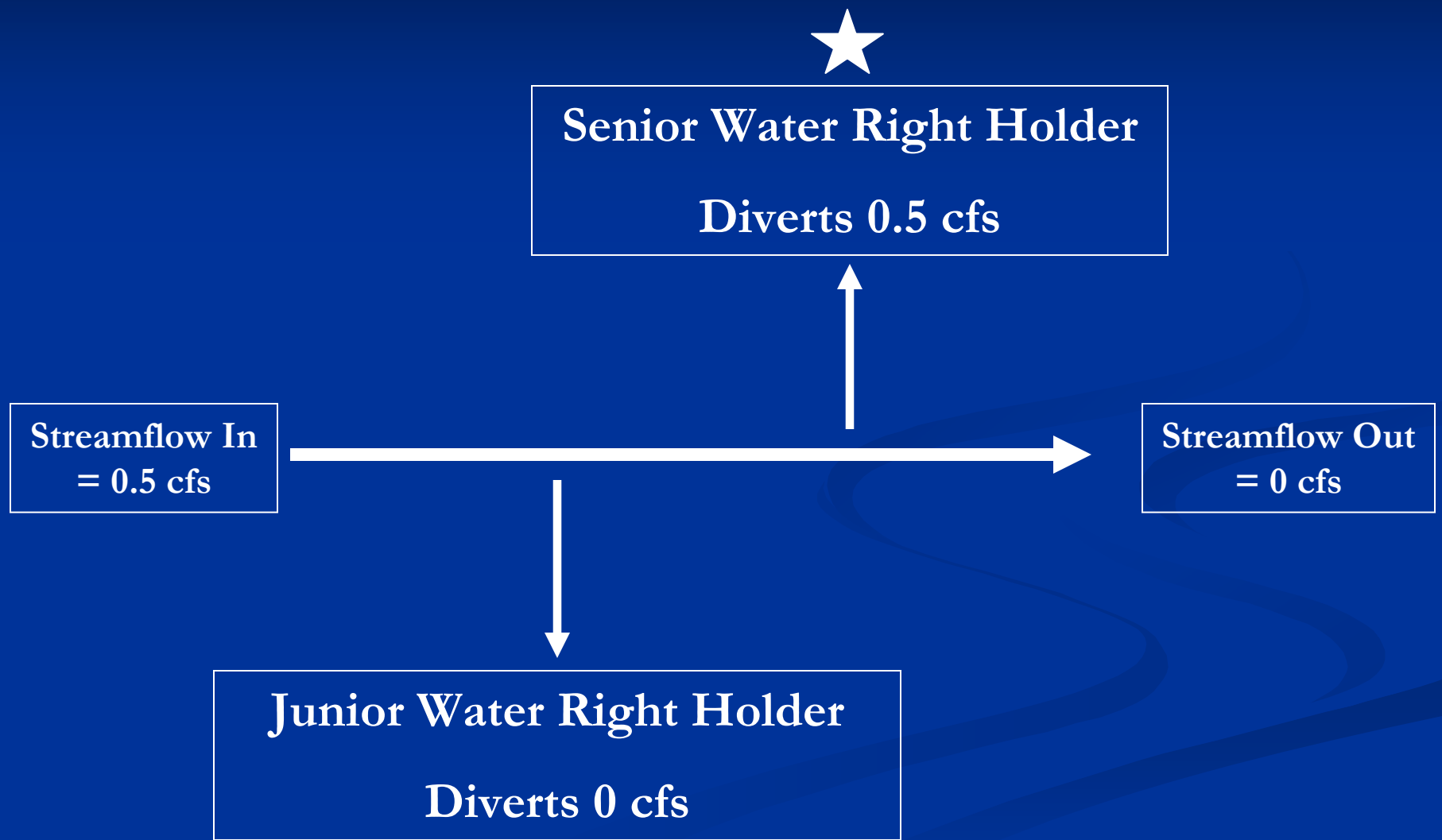
## Both Water Right Holders Able to Divert Full Rights



# Junior Water Right Holder Not Able to Divert Full Right Senior Water Right Holder Able to Divert Full Right



# Junior Water Right Holder Not Able to Divert at all and Senior Water Right Holder Not Able to Divert Full Right



How can anyone think you  
need a water right for rainwater  
catchment and use?

RCW 43.27A.020

“Water resources” means all waters  
above, upon, or beneath the surface of the  
earth, located within the state and over  
which the state has sole or concurrent  
jurisdiction



# More Reasons

## ■ RCW 90.03.010

Subject to existing rights all waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and in the manner provided and not otherwise...

## ■ RCW 90.03.250

Any person... hereafter desiring to appropriate water for a beneficial use shall make an application to the department for a permit to make such appropriation, and shall not use or divert such waters until he has received a permit.

# Even More Reasons

- SEATAC Third Runway Decision
  - Stormwater is water of the state
  - The capture of stormwater absent beneficial use does not require a water right
  - Releasing stormwater to mimic pre-project conditions does not require a water right
  - Implied that the use of stormwater for irrigation is different because irrigation is a consumptive beneficial use

# Possible Paths Forward

- Classic Water Right Paths
- Ecology Focus Sheet
- Legislation
- Ecology Rule Making
- Regional “Umbrella” Permits

# Classic Water Right Paths

- **Change an existing water right**
  - Usually processed quicker than a new application
  - Need to have an existing water right to change
- **New water right application**
  - Capture rainwater that would drain directly to saltwater
  - Process can take many years, outcome uncertain

# Ecology Focus Sheet

- Focus on Rainwater Collection and Water Right Permitting (#07-11-018)

“The department does not require permits for systems using *de minimus* (negligible) amounts of rainwater (e.g., residential rain barrels or ornamental pond kits storing a few hundred gallons).”

# Legislation

- Bills around for past 8 years
  - Rainwater catchment exempt from permitting
  - Limit on the volume of storage
  - Catch and use on same property



# Ecology Rule Making

- Initial Stakeholder meeting held
- 4 Public Meetings have been held
- Likely that more stakeholder meetings will be held in near future

# Seattle Public Utilities Permit

- Issued at end of 2007 (S1-28477P)
- Water Right obtained by SPU to cover rainwater catchment by individuals and businesses.
- Limitations:
  - Area served by the combined and partially combined sewer system
  - Rooftop catchment only
  - Non-potable uses only
- Limitations in place to guarantee no negative impacts to surface water or closed water bodies.





# San Juan County

- Watershed Planning Group Recommendation
- Ecology funded study of impacts to streamflow for different capture and use scenarios.
  - If use was for domestic supply and home was on septic system, potential to increase flow in streams in summer.
- Applications have been submitted for the four largest islands.

# Questions?

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